

House File 66 - Introduced

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A BILL FOR

1 An Act relating to children of military service members on
2 active duty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41D, Code 2011, is amended to read
2 as follows:

3 **598.41D Assignment of visitation or joint physical care —**
4 **parent serving active duty — family member.**

5 1. Notwithstanding any provision to the contrary, a
6 parent who has been granted court-ordered visitation with
7 or joint physical care of the parent's minor child may file
8 an application for modification of a decree or a petition
9 for modification of an order regarding child visitation or
10 joint physical care, prior to or during the time the parent
11 is serving active duty in the military service of the United
12 States, to temporarily assign that parent's visitation rights
13 or award of joint physical care to a family member of the minor
14 child, as specified by the parent. The application or petition
15 shall be accompanied by an affidavit from the family member
16 indicating the family member's knowledge of the application or
17 petition and willingness to exercise the parent's visitation
18 rights or assume joint physical care of the child during the
19 parent's absence. The application or petition shall also
20 request any change in the visitation schedule or award of joint
21 physical care necessitated by the assignment.

22 2. a. If the active duty of a parent affects the parent's
23 ability or anticipated ability to appear at a regularly
24 scheduled hearing, the court shall provide for an expedited
25 hearing in matters instituted under this section.

26 b. If the active duty or anticipated active duty of a parent
27 prevents the parent from appearing in person at a hearing, the
28 court shall provide, upon reasonable advance notice, for the
29 parent to present testimony and evidence by electronic means
30 in matters instituted under this section. For the purposes of
31 this paragraph, "*electronic means*" includes communication by
32 telephone, video teleconference, or the internet.

33 3. a. The court may grant the parent's request for
34 temporary assignment of visitation or joint physical care
35 and any change in the visitation schedule or award of joint

1 physical care requested if the court finds that such assignment
2 of visitation or joint physical care is in the best interest
3 of the child.

4 *b.* In determining the best interest of the child, the court
5 shall ensure all of the following:

6 (1) That the specified family member is not a sex offender
7 as defined in section 692A.101.

8 (2) That the specified family member does not have a history
9 of domestic abuse, as defined in section 236.2. In determining
10 whether a history of domestic abuse exists, the court's
11 consideration shall include but is not limited to commencement
12 of an action pursuant to section 236.3, the issuance of a
13 protective order against the individual or the issuance of a
14 court order or consent agreement pursuant to section 236.5,
15 the issuance of an emergency order pursuant to section 236.6,
16 the holding of an individual in contempt pursuant to section
17 664A.7, the response of a peace officer to the scene of
18 alleged domestic abuse or the arrest of an individual following
19 response to a report of alleged domestic abuse, or a conviction
20 for domestic abuse assault pursuant to section 708.2A.

21 (3) That the specified family member does not have a record
22 of founded child or dependent adult abuse.

23 (4) That the specified family member has an established
24 relationship with the child and assigning visitation or joint
25 physical care to the specified family member will provide
26 the child the opportunity to maintain an ongoing family
27 relationship that is important to the child.

28 (5) That the specified family member is able to personally
29 and financially support the child during visitation or joint
30 physical care.

31 4. An order granting assignment of visitation rights or
32 award of joint physical care under this section does not create
33 separate rights to visitation or an award of joint physical
34 care for a person other than the parent.

35 5. The parent whose visitation rights are or award of joint

1 physical care is temporarily assigned shall provide a copy of
 2 the order granting assignment of visitation or joint physical
 3 care to the school and school district of the child to whom the
 4 order applies.

5 6. An order granting temporary assignment of visitation
 6 rights or award of joint physical care pursuant to this section
 7 shall terminate upon notification of the court by the parent
 8 or automatically upon the parent's completion of active duty,
 9 whichever occurs first.

10 7. After a parent completes active duty, if an application
 11 for modification of a decree or a petition for modification of
 12 an order is filed, the parent's absence due to active duty or
 13 the assignment of visitation rights or award of joint physical
 14 care does not constitute a substantial change in circumstances,
 15 and the court shall not consider a parent's absence due to that
 16 active duty or the assignment of visitation rights or award of
 17 joint physical care in making a determination regarding the
 18 best interest of the child relative to such an application or
 19 petition filed after a parent completes active duty.

20 8. As used in this section, "*active duty*" means active
 21 military duty pursuant to orders issued under Tit. X of the
 22 United States Code. However, this section shall not apply to
 23 active guard and reserve duty or similar full-time military
 24 duty performed by a parent when the child remains in actual
 25 custody of the parent.

26 EXPLANATION

27 This bill relates to the custody-related issues of children
 28 of active duty military personnel. The bill provides that in
 29 addition to assignment of court-ordered visitation, a parent
 30 who will be or is serving active duty in the military service
 31 of the United States, may petition to have an award of joint
 32 physical care assigned to a family member of the minor child,
 33 as specified by the parent. As with assignment of visitation,
 34 the court must determine that the assignment of the award of
 35 joint physical care is in the best interest of the child based

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1 on the factors specified in the bill.